FIRST NATION PROPERTY TAXATION REVIEW

1999 - 2000

ANNUAL REPORT

OF THE

INDIAN TAXATION ADVISORY BOARD

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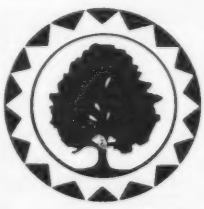

COMMISSION CONSULTATIVE DE LA FISCALITÉ INDIENNE

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MESSAGE FROM THE CHAIRMAN

This past year has clearly been the busiest and most rewarding in the history of the Indian Taxation Advisory Board (ITAB). I would like to take this time to review some of the highlights.

As many of you know, ITAB has been a strong advocate of a new fiscal relationship for First Nations. This is imperative in protecting existing First Nations tax jurisdiction, increasing revenue options and ensuring a sustainable First Nation government. As the first, and only, national First Nation fiscal institution, ITAB has been actively supporting the process towards a new fiscal relationship for the last two years.

Much work has been done on the development of the First Nation Taxation Commission (FNTC) as a successor institution to ITAB. The FNTC is a natural next step in the evolution of ITAB and will change the organization from an advisory body reporting to the Minister to a service agency for First Nations and on-reserve taxpayers. It will promote administrative efficiency, fairness and the economic development of First Nations. This new institution will continue to serve the needs of First Nations and their property taxpayers in a framework of legislative independence. I was very gratified to receive resolutions of support for the FNTC from First Nation tax authorities and the Assembly of First Nations.

However, the achievement in which I take greatest satisfaction is the fact that 83 First Nations from across the country are now generating $35 million in annual revenue under section 83 of the *Indian Act*, which in turn has created over 1,000 person years of employment. We have improved administrative efficiency through training and technology, reduced disputes and improved the overall accountability to on-reserve taxpayers and First Nation members. As we move forward into this new century, I can only hope that our success continues and this exciting initiative continues to gain momentum.

Sincerely,

Chief C.T. (Manny) Jules
Chairman

1999-2000

ANNUAL REPORT OF THE

INDIAN TAXATION ADVISORY BOARD

Mission

"To assist First Nations in achieving self-government through the establishment of taxation jurisdiction"

EXECUTIVE SUMMARY

The Indian Taxation Advisory Board (ITAB) represents a unique institutional relationship between the Minister of Indian Affairs and First Nation governments. ITAB has exercised its mandate to ensure the smooth and credible introduction of First Nations property taxation jurisdiction on reserve.

Because of its unique role in the drafting process, ITAB has become a bridge between First Nation bylaws and federal legislation. ITAB has streamlined the process and eased the manner in which First Nations can establish their own taxation regimes through the development of sample legislation, computer software, workshops, publications, and ITAB's own body of policies and procedures. Largely through ITAB's efforts, all governments have gained valuable expertise in the intricacies of First Nation law-making dynamics.

ITAB is widely recognized as the leading authority on First Nations property taxation in Canada and is committed to developing strong First Nation tax administrations. As the number of First Nations with real property tax regimes continues to increase, so too does the requirement for strong tax administrators to manage and administrate them. In addition, courses designed for municipal taxation regimes do not meet the unique requirements of managing and/or administering a real property taxation regime on reserve. As a result, ITAB is instituting education and training initiatives to establish a level of professionalism for First Nation tax administrators and facilitate their mobility between First Nations, and to serve as a model for future capacity development initiatives.

ITAB has also established partnerships and networks to foster a better understanding of First Nation property tax lawmaking — not only to reduce the potential for conflict between other affected parties and First Nations, but to generate support for new tax initiatives. When necessary, ITAB has repeatedly and successfully filled the role of mediator in conflicts between First Nations, third party interests and other levels of government.

The *First Nations Gazette*, produced in partnership with the Native Law Centre at the University of Saskatchewan, is an excellent example of the type of alliance ITAB has sought to move the self-government agenda forward. The publication of First Nation's taxation bylaws through the *Gazette* ensures transparency of First Nation taxation initiatives to community members, on-reserve taxpayers and the public at large. More importantly, the *Gazette* provides First Nation lawmakers and the courts with a critical new tool for the notice and enforcement of their laws.

ITAB has been assigned a special role in helping to develop a new fiscal relationship between First Nations and Canada, through its participation in the Assembly of First Nations (AFN) *National Table on Fiscal Relations*. The ITAB Chairman acts as co-chair — along with AFN Vice-Chief Herb George — for the AFN Chiefs Committee on Fiscal Relations, which was formed in February 1999. In September 1999, ITAB and the AFN signed a protocol agreement to share information, research and expertise. A great deal of work lies ahead, but the Board is excited to be an important participant in this challenging initiative.

In accordance with the *Memorandum of Understanding* between ITAB and the Minister of Indian Affairs, work continued on the creation of the First Nation Taxation Commission (FNTC). This will change the organization from an advisory body reporting to the Minister to a statutory, legislated service agency. It will be directly accountable to the federal government through Parliament, and also to First Nation taxing authorities, taxpayers and other affected parties through performance measures in the same manner as other Crown authorities. It will report annually on its progress with respect to these measures. As a service agency, the FNTC will have an appropriate degree of independence from the federal government yet remain fully accountable.

Consultation on the FNTC continued in 1999-2000. Beginning with the ITAB Chairman's appearance before the Senate Standing Committee on Aboriginal Peoples in February 1999, it was followed by meetings with a wide variety of interested parties: the Canadian Energy Pipeline Association, the First Nation Tax Administrators Institute, on-reserve taxpayers, the Union of British Columbia Municipalities, the Assembly of First Nations and the House of Commons Standing Committee on Finance. A resolution was also passed by the AFN in July 1999 to support the development of the FNTC.

I. OPERATIONS

Authority

In 1988, First Nation-led amendments to the *Indian Act* extended the taxing powers of First Nations to their interests in conditionally surrendered or "designated" lands. This change to the *Indian Act* gave First Nations broad new powers to tax the interests within reserves, thereby establishing their jurisdiction, creating economic development opportunities and providing a basic tool for self-government. ITAB was established in 1989 to complement these amendments to the *Indian Act* and to facilitate the approval of First Nation taxation bylaws. As such, ITAB became the first independent, Aboriginal-controlled institution involved in the exercise of the Minister of Indian Affairs' decision-making authority under the *Indian Act*.

Mandate

- Promoting the exercise of First Nation real property taxation jurisdiction in support of self-government and self-reliance.
- Examining taxation bylaws proposed by First Nations under section 83 of the *Indian Act* and recommending their approval to the Minister.
- Advising the Minister on policy related to the taxation powers of First Nations.
- Assisting First Nations interested in developing taxation bylaws.
- Fostering harmonization between taxation by First Nations and by other authorities.
- Hearing from taxpayers whose interests are affected by taxation under section 83, and considering this information in making recommendations to the Minister.
- Providing mediation and alternate dispute resolution mechanisms to First Nations, governments, taxpayers and other affected parties with respect to matters related to the exercise of First Nations property tax jurisdiction.
- Advising the Minister on means to improve the administration of the Minister's statutory responsibilities under section 83.
- Ensuring First Nation tax bylaws are properly and adequately promulgated, and the context of the bylaws are accessible to the public, through the publication of the *First Nations Gazette*.
- Continuing discussions with departmental officials on the Board's further development in the area of new fiscal relations between First Nations and Canada.
- Working with the Minister to develop legislative proposals for the establishment of a permanent body, which may include the Board as a statutory institution of self-government.

Membership

The five-member Board is composed of respected members of First Nations who possess knowledge and experience in the areas of First Nation government, intergovernmental relations, property taxation, reserve land development, economic development and the provision of government services. Each has been given a mandate by their regional/provincial political organization to serve as a member of the Board and to reflect the various perspectives of First Nations across the country.

The members are:

- Chief Clarence (Manny) Jules, Chair, Kamloops Indian Band, BC.
- Strater Crowfoot, Vice-Chair and Rates Committee Chairman, Siksika Nation, AB.
- David Paul, Tobique First Nation, NB.
- Chief William (Bill) McCue, Chippewas of Georgina Island, ON.
- Ricky Fontaine, Innu Takuaikan Uashat mak Mani-Utenam (Sept Iles), QC.

Process

The Board has established policies, precedents and procedures regarding bylaw development, enactment, approval and implementation, including bylaw enforcement and assessment appeal procedures. All bylaws proposed under section 83 are reviewed to ensure conformity with the *Charter of Rights and Freedoms* and enabling legislation, comprehensiveness, equity and natural justice, fairness, adequacy of notification and appeal procedures, and the absence of ministerial liability.

In addition, a comprehensive analysis of issues reflecting the perspectives and interests of First Nations, on-reserve taxpayers and other affected parties is conducted when formulating recommendations to the Minister. First Nations governments must demonstrate evidence that they have consulted with potential taxpayers and other governments, and that all reasonable measures have been taken to ensure that there will be an orderly transition to the First Nation taxation regime. Furthermore, when necessary, ITAB requests comments from the appropriate federal government departments or sectors within the Department of Indian Affairs and Northern Development (DIAND) in order to provide the Minister with the assurance that all interests and perspectives have been considered.

Although all real property taxation systems are built upon the twofold foundation of the *tax base* and the *tax rate*, taxation of property by First Nations has raised unique concerns. For example, the fact that on-reserve taxpayers cannot vote in First Nation elections means that differences in perception often exist between First Nations, ratepayers, and municipal, provincial and federal authorities. These differences affect how each views their relationship with each other, as well as how they view tax and how they view land. As well, the differences between the fiscal and service

requirements of a First Nation and that of a nearby municipal property taxation authority within a province may result in a requirement to establish different rate structures. Finally, voting, which ordinarily acts as an influence on rates, will be replaced through other mechanisms such as taxpayer associations to ensure that taxpayer interests are considered.

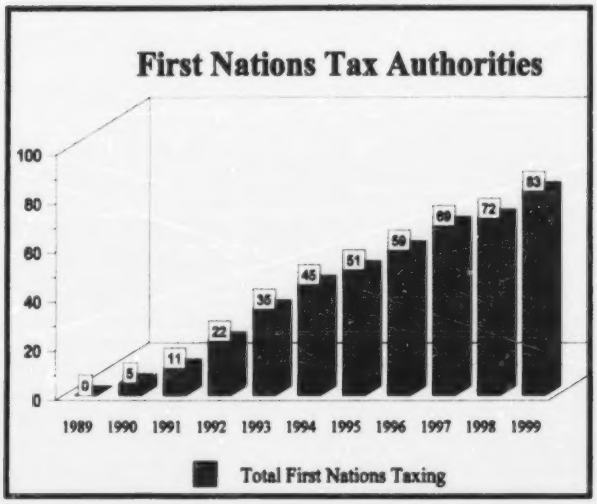
Recognizing these issues, the Board has established a Rates Committee. Its mandate is to develop policy and review each First Nation's proposed annual rates bylaw with the objective of balancing the need to respect on-reserve taxpayers' rights to fairness and equity with the need to respect the accountability of First Nation governments to their citizens.

Support

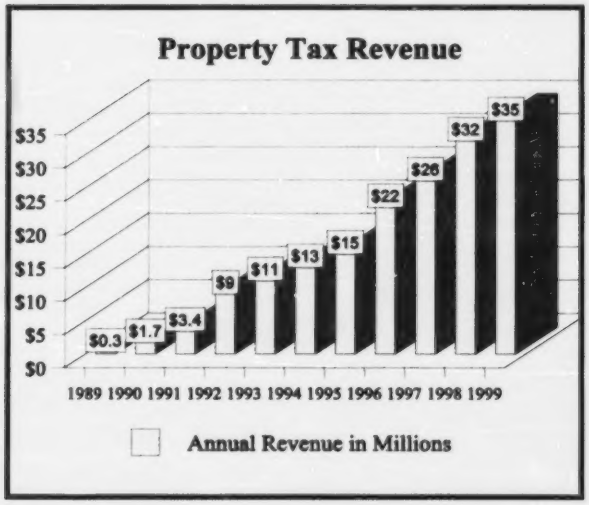
The Board is supported by a staff of ten employees located in the Eastern Office in Ottawa, Ontario and the Western (head) Office in Kamloops, British Columbia. The Office of the Chairman is located within the Western Office. The staff provide professional and logistical support, and assist the Board by reviewing proposed taxation bylaws and developing related policy. The Board is also supported by a network of specialized consultants and First Nation advisors.

Results

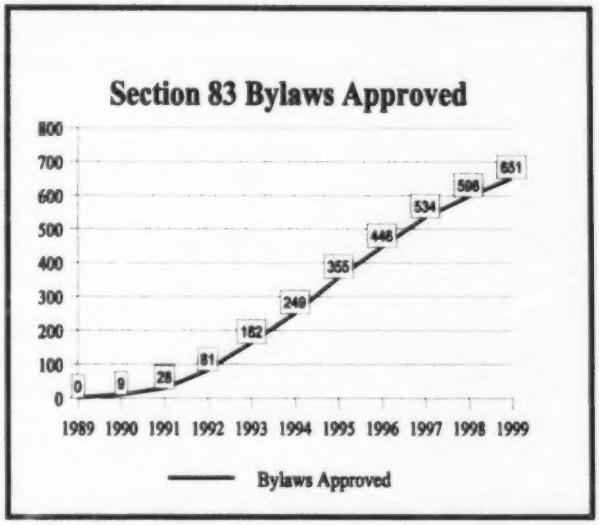
Eighty-three First Nations were exercising taxation jurisdiction as of March 31, 2000. Over 13 percent of First Nations in Canada are now levying property taxes on reserve.



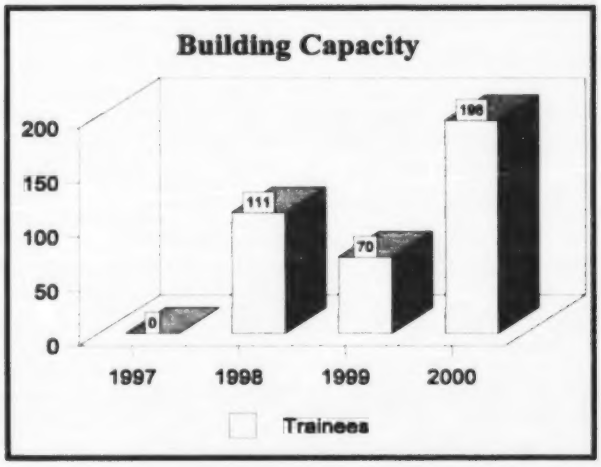
Annual revenues to First Nations from taxation exceeded $35 million for 1999-2000. Since 1989, more than $168 million has been generated through property taxation on reserve.



The variety, complexity and volume of bylaws processed by the Board each year, and approved by the Minister, has increased steadily. By the end of 1999, ITAB had reviewed 651 bylaws in the areas of property taxation, assessment, rates, expenditure, business licensing, financial administration, telephone companies and related amendments.



In 1999, with a view to building the capacity of First Nation tax administration, over 70 candidates received certification upon completing the ITAB *Mediation-Interest Based Negotiation, Budget-Based Tax Rates* or *Client Lands Assessment Services System* courses. Two hundred candidates are projected to receive training in 2000.



II. PROGRAMS

1. Bylaw Services

First Nation Bylaw Development

In 1999, the following First Nation communities established property tax jurisdiction through bylaws enacted under Section 83 of the *Indian Act*:

(a) Property Taxation
- Nadleh Whut'en, BC
- O'Chiese, AB
- Whitefish Lake, AB
- Alexis First Nation, AB
- Dene Tha' First Nation, AB
- Ocean Man, SK

(b) Telephone Companies
- Nipissing First Nation, ON
- Miawpukek, NF

(c) Business Licensing
- Hay River First Nation, NT

(d) Waterworks
- Westbank First Nation, BC

(e) Expenditure
- Stellat'en First Nation, BC

As well, 65 amendments (including rates bylaws) to existing bylaws were reviewed by ITAB for policy compliance and forwarded to the Minister for approval.

ITAB Policy Development Process

ITAB reviewed its policy development process during 1999. The review included much thoughtful discussion and deliberation concerning the challenges of implementing national policies on 2,300 reserves belonging to 633 First Nations located in ten provinces. A number of initiatives will be brought forward to the full Board for consideration later in 2000.

ITAB Policy Objectives

1. **Promote and Protect Jurisdiction**. The first objective of ITAB is to clear the path for First Nations wishing to occupy on-reserve tax jurisdictions. Challenges to the First Nation property tax jurisdiction have come from municipal, provincial and federal jurisdictions and court decisions. A paramount objective of ITAB policy is to proactively respond to these challenges to First Nation property tax jurisdiction through effective communication strategies.

2. **Balance Interests**. ITAB policies intended to prevent or mitigate local disputes, the tax policy interests of the First Nation government will be reconciled with the tax policy interests of the taxpayers.

3. **Expand Revenue Jurisdiction**. ITAB policies should help create the necessary trust and capacity in First Nation property tax systems to facilitate the occupation of future First Nation revenue raising jurisdictions.

4. **Encourage Economic Development**. ITAB policies should promote tax administrative capacity and tax expenditure efficiency, and increase local returns to investment through tax rate and tax revenue stability.

5. **Protect Tax System Integrity**. ITAB policies should seek to ensure that the tax policies of one First Nation enhance the tax policy environment of other First Nations.

6. **Promote Efficiencies**. Property tax policies seek to achieve economic, technical and administrative efficiency throughout the First Nation property tax system.

Budget-Based Property Taxation Rates/Policy Development

The 1998 amendment to the ITAB Rates Policy meant that all First Nations with real property taxation regimes approved under Section 83 of the *Indian Act* must, by 2002, base tax rates upon an annual property tax expenditure plan derived from an approved Band Council budget (a budget-based methodology). Currently, First Nations can adopt one of two methods to set their annual tax rates: the "comparative method" whereby a First Nation will adopt the same tax rate structure as set by a neighboring municipal jurisdiction; or the budget-based method. Under the latter method, a First Nation calculates tax rates for each property class, which are then applied to the assessed values to yield the required level of tax revenue as determined by the budget-setting process. Virtually all municipalities in Canada determine their taxation rates through a budget-setting exercise.

The setting of property taxation rates based upon a property tax budget enhances the autonomy of First Nation governments and at the same time, better reflects the local conditions driving tax revenue requirements. It also enhances the transparency and accountability of Band Council expenditures to First Nation community members and provides the non-voting taxpayer with an accounting of, and rationale for, the expenditure of their real property tax monies.

The policy was adopted to ensure that real property tax rates are based upon an annual property tax expenditure plan derived from a duly approved Band Council budget. Refinements made in 1999 now require that all tax rate increases be reviewed by the Rates Committee and that discrete tax rates be established for each and every property class defined in the relevant provincial legislation, regardless of the actual taxable interests on reserve.

Thirteen First Nations now use the Budget-Based Tax Rates methodology.

National Assessment Policy Development

The goal of a national assessment policy is to ensure that the means of valuing property established in First Nation regimes are equitable, comprehensive, open, able to withstand public scrutiny, and applied uniformly so that property taxes may be levied and distributed as fairly as possible across Canada.

The Rates Committee is reviewing the feasibility of developing a national real property assessment policy for First Nations. The absence of a national standard for both assessment methods and assessment appeals processes makes the development of a First Nation policy very challenging. Provincial jurisdiction in this field results in a wide variety of property valuation methods. A national policy must reflect First Nations values, yet be flexible to reflect the legislative and policy differences between provinces. At the same time, an assessment policy must enable an individual First Nation to set rates based on its own budget/expenditure requirements. In the context of fairness to taxpayers, as well as attracting new economic and commercial enterprises to locate on the reserve, First Nation assessments and tax rates should be equitable with those of their neighbouring municipal jurisdiction.

A twofold approach is being pursued:

1. The first would apply to properties where a market value method is easily applied. Under this approach, the key evaluation guideline of a First Nation's proposed assessment method is the degree to which it conforms to the market value assessment systems used by neighbouring jurisdictions. The ideal situation would have First Nations adopting identical assessment methods.

2. A second approach must be developed for properties which are difficult to assess using market value techniques. These properties can be referred to as non-market value properties and would include "linear" properties (e.g. rights-of-way interests held by railways, pipelines, telecommunications and power corporations) and other types of "special" properties, such as agricultural, forest, industrial resource or recreational. For these properties, policy guidelines must be developed to evaluate alternative assessment methods as advanced by First Nations.

With 72 percent of the property tax bylaws in British Columbia, ITAB has initiated discussions with the BC Assessment Authority and the BC Ministry of Municipal Affairs. The purpose is to establish a partnership for assessing the practicality of establishing property assessment standards in a policy that will accommodate the different provincial systems of assessing real property while still remaining responsive to First Nations' requirements.

Tax Revenue and Expenditure Policy Development

The feasibility of developing a national Tax Revenue and Expenditure Policy is also being assessed by the Rates and Policy Committee. The first step in developing this type of policy will be to establish expenditure classification categories.

A description and comparison of the classification systems adopted by Statistics Canada in their Financial Management System, the BC Municipal Affairs Statistics group, as well as those contained in ITAB's *Mill Rate Wizard* system was presented to the Committee in June 1999. It was recommended that the classification expenditure categories used in the Statistics Canada Financial Management System and ITAB's *Mill Rate Wizard* would be most appropriate.

The next step in the development of the Expenditure Classification System is to establish a work plan and enter into discussions with Statistics Canada with a view to correlating the two existing classification systems.

2. Expand First Nation Tax Jurisdiction

Taxation of Utilities

The Board has initiated discussions and negotiations with various public utilities at the provincial level to expand potential revenue jurisdiction sources on behalf of all First Nations.

(a) Ontario Hydro

The 1994 negotiations between ITAB and Ontario Hydro resulted in the creation of an Aboriginal Payments-in-Lieu of Taxes (PILT) program. At that time, unlike municipalities, First Nations were not given grants in lieu of taxes for Ontario Hydro assets located on their land. The PILT program resolved this inequality. ITAB and Ontario Hydro jointly developed a sample funding agreement which individual First Nations could use to access the PILT program.

In total, 31 First Nations are eligible for funding. Of these, 17 have either signed agreements or are in negotiations. Payments since 1996 have been in excess of $1,000,000.

(b) Bell Canada (Ontario)

As an incorporated public utility, Bell Canada is governed by the *Ontario Municipal Act* in the conduct of its activities. The *Act* requires Bell Canada to return a percentage of the gross receipts collected from telephone users to their respective municipal governments. The *Ontario Municipal Act* and the *Indian Act* were silent as to the treatment of Bell Canada interests on First Nations' lands.

ITAB concluded negotiations with Bell Canada in 1995, wherein the Corporation agreed that a First Nation bylaw enacted under section 83 of the *Indian Act* and approved by the Minister would be the authorizing legislation required to make a gross receipts disbursement to an individual First Nation government. ITAB and Bell Canada developed a mutually satisfactory sample bylaw which is now available to all First Nations.

Under this bylaw, 127 communities in Ontario are eligible for an overall revenue potential of approximately $1,000,000 annually. Eight communities have enacted legislation and another twenty-four Treaty communities have entered a special group agreement.

c) BC Hydro

Since 1994, BC Hydro, as a Crown Corporation, has claimed exemption from taxation under section 83 of the *Indian Act*; one level of government cannot impose taxes on another level (the taxation of Hydro assets on reserve land by First Nations). In 1999, the Supreme Court upheld this claim. Even with the ruling in its favour, BC Hydro entered into negotiations with ITAB's First Nations Negotiating Committee to find a methodology by which payments could be made to 45 First Nations.

The issues to resolve were many, various and complex, including: historic grievances; trespass; timber removal; date of commencement for payment; formulae and legislative instruments.

Negotiations have concluded with the parties entering into an agreement in principle that would lead to a payment to the First Nations. This agreement is now awaiting final approval.

(d) Union Gas (Ontario)

In September 1999, Union Gas Limited (a natural gas transmission company) contacted ITAB to discuss taxation by First Nations in Ontario. The company voluntarily proposed to make payments-in-lieu of taxes (PILT) for the 1999 taxation year to the 17 First Nations in Ontario which have taxable gas transmission line interests on reserve. Union Gas will pay the eligible First Nations the same rate as the company pays to eligible municipalities.

(e) Pacific Northern Gas and Centra Gas Companies (BC)

The Pacific Northern Gas and Centra Gas Companies met with ITAB in September 1999 to discuss the development of a payment-in-lieu of taxation agreement for First Nations that have distribution systems and transmission lines on their reserves but who do not have taxation bylaws. The utilities sought to initiate a process which would address the inconsistencies in their present payment scheme. The proposed process is similar to that being developed for Union Gas.

(f) Manitoba Hydro

A change in the regulatory framework in Manitoba has opened the door for the province to discuss grants-in-lieu of taxation for First Nations by Manitoba Hydro. An exploratory meeting between appropriate officials will be arranged.

Fiscal Relationships

ITAB has been a strong advocate of a new fiscal relationship for First Nations with Canada. The recommendation of the Royal Commission on Aboriginal Peoples (RCAP) that a new fiscal relationship between First Nations and the Government of Canada be established was fully endorsed by the Board.

Encouraged by the position of the federal government in *Gathering Strength*, Canada's Aboriginal Action Plan, the Assembly of First Nations established the AFN Chiefs Committee on Fiscal Relations in February 1999 (of which the ITAB Chairman is a co-chair). One of the first acts of the Committee was the development of a joint work plan with the federal government. A formal Memorandum of Understanding (MOU) between the AFN and the Government of Canada to implement this work plan was signed in December 1999.

In September 1999, ITAB and the AFN signed a protocol to formalize their cooperative working relationship with respect to creating an expanded fiscal relationship with Canada. ITAB agreed to provide a coordinating leadership role to the Fiscal Table through the ITAB Chairman. The Board also agreed to support the national fiscal process with consultation, research, project management and expertise in institutional development by participation in the institutional coordination process to the Fiscal Table and its supporting sub-committees.

3. Strengthening First Nation Tax Administration

Education and Training

The management of a real property taxation system is an emerging speciality within self-government. A broad set of skills is required to undertake bylaw management and maintenance of various pieces of legislation covering such things as rate setting, assessment, appeals, financial management and effective ongoing communications with community members and on-reserve taxpayers. However, institutional training in these unique subject areas, specific to the First Nation setting, has not been available and ITAB has acted to fill this void.

Consistent with the mandate of the Board and the capacity building objectives of *Gathering Strength*, the Board has focussed considerable attention on the training of tax administrators. Working with the University of Victoria, the Consensus Building Institute of Harvard University and others, ITAB has successfully developed a number of certificate courses in tax administration and mediation.

ITAB's courses have proven successful in improving the overall accountability to on-reserve taxpayers and First Nation members, implementing labour-saving technology, reducing disputes, improving administrative efficiency and facilitating First Nation tax administrator labour mobility.

Budget-Based Real Property Tax Rates Training

The Board has adopted a national policy whereby real property tax rates on reserve must be established each year based upon an annual expenditure plan derived from an approved Band Council budget. The setting of property tax rates based upon a property tax budget parallels the methodology used by municipalities in Canada. It enhances the autonomy of First Nation government and, at the same time, provides the non-voting on-reserve taxpayer with an accounting and rationale for the expenditure of their tax monies. This system replaces the former method of setting tax rates based upon those in an adjacent municipality.

A real property tax rates training course was developed in 1998 to teach First Nation property tax administrators the skills required to implement the policies, methodologies, systems and software operations of a budget-based real property taxation system. Twenty-nine successful candidates received certificates of completion. Three courses were held in 1999 at the University College of the Caribou, in Kamloops, BC. Three more courses are planned for 2000-2001.

Client Lands Assessment Services System (CLASS)

The Client Lands Assessment Services System (CLASS) is a database management system for the total administration and management of property tax folios including the calculation of property taxes. It is the result of research, development and consultation with First Nation tax administrators. The objective is to establish standards for all First Nation property tax systems in Canada. It eliminates the variety of methods of processing tax notices and payments, interests and penalties. CLASS is helping to define national tax administrative standards while accommodating regional variations, improving accountability to taxpayers and First Nation citizens, and further helping to increase the capacity of First Nation governments.

A comprehensive curriculum and cost recovery training course was developed for the implementation of CLASS. During 1999-2000, on-site courses were held in six First Nation communities with a total of 16 tax administrators receiving certification.

4. Public Education

The Board builds awareness and understanding by all parties about First Nation property taxation through its various communication activities. The goal is to enhance public knowledge and understanding of First Nation taxation on reserve lands.

Awareness and Understanding

The Chairman, members of the Board and senior staff were invited to make presentations at conferences and workshops across Canada focussing on First Nations property taxation, jurisdiction, economic development and the role of ITAB. Presentations in 1999-2000 included:

- House of Commons Standing Committee on Finance;
- Consensus Building Institute, Harvard University;
- Assembly of First Nations;
- Canadian Property Tax Association;
- Federation of Canadian Municipalities;
- Union of British Columbia Municipalities;
- Musqueam Tenants' Association;
- First Nations Tax Administrators' Association;

- Council of Yukon First Nations; and
- Forum of Federations.

Partnerships and Networks

ITAB's advocacy and communication objectives are enhanced through partnerships and networks which have been established within a number of national and regional institutions. ITAB's participation is an ongoing obligation and commitment. These institutions include:

- Assembly of First Nations;
- Native Law Centre, University of Saskatchewan;
- Federation of Canadian Municipalities;
- Canadian Energy Pipeline Association;
- British Columbia Utilities Group;
- British Columbia Assessment Authority;
- First Nations Tax Administrators' Association;
- First Nations Financing Authority;
- Consensus Building Institute (MIT - Harvard Public Disputes program);
- Canadian Property Tax Association; and
- University of Victoria.

First Nations Gazette

The *First Nations Gazette*, launched on Aboriginal Day, June 21, 1997, is published twice annually as a joint partnership of ITAB and the Native Law Centre at the University of Saskatchewan. The *Gazette* is the authoritative vehicle by which legal notice is given to the public of First Nations legislation. Publication on a regular basis is intended to increase awareness of Indian taxation initiatives among First Nations and the general public, and to assist First Nations in the enforcement of their tax laws by ensuring that regular notice is provided and that a register of all current tax bylaws is readily available. The target audience is the judiciary, members of the legal profession, First Nations and their citizens, provincial and municipal governments, on-reserve taxpayers and academic institutions. The *First Nations Gazette* is actively marketed on a subscription basis with the goal of becoming financially self-sustaining.

Clearing The Path

ITAB's newsletter, *Clearing the Path*, is published quarterly and is designed to keep readers informed of the evolution and issues surrounding real property taxation on reserve. The circulation base of the newsletter now exceeds 2,000 readers.

ITAB information is also available at www.itab.org on the Internet.

5. Mediation

ITAB is often called upon to mediate disputes between First Nations and public utilities, commercial/industrial entities, agricultural interests or on-reserve residents. Disputes include service agreements, assessments, government accountability, the expenditure of tax monies, new tax rates or increases in tax rates.

The smooth transition and transfer of real property jurisdiction to First Nation control is one of the Board's highest priorities. The concept of a First Nation administering the taxation of real property on reserve can be controversial. The process of reaching an agreement between a First Nation and a municipal government for the continuation of services on reserve to taxpayers, and the resulting fee structure, can be complex.

A new First Nation property tax regime will, in many cases, replace the previous provincial or municipal property tax system in the collection of revenues and the delivery of services to lessees on First Nation land. Since most First Nations do not have the service delivery infrastructure or capacity required, a service agreement is necessary to continue providing the same level of services to taxpayers.

ITAB supports the harmonious development of service agreements between First Nations and adjacent tax jurisdictions, and offers mediation and facilitation services for that purpose.

To assist in these processes, ITAB worked with the School of Public Administration at the University of Victoria to develop *A Background Paper on the Essential Components of Service Agreements*. The document is used as an authoritative reference to assist First Nations engaged in service agreement negotiations.

Another tool which has proved to be highly effective in this area is ITAB's *Service Agreement Software*. The software was developed by ITAB for calculating tax equivalent costs for 34 services and is now widely used by First Nations in calculating the true cost of providing services to on-reserve taxpayers.

Mediation Program Development

ITAB has developed a number of processes that have proven effective in the resolution of disputes between First Nations, municipal governments, provincial governments and taxpayers on reserve. With more than 10 percent of First Nations collecting property taxes across Canada, there is greater pressure on this mediation service. In 1998-1999, the Board identified the need to establish mediation procedures and standards that can be used to guide Board members and staff in dispute resolution across the country.

With the assistance of the Consensus Building Institute (CBI) at Harvard University, ITAB is working to formally establish a mediation program that will provide the basis for third-party intervention to resolve tax-related disputes. This will include seven phases:

1. a mediation program planning and partnership session;
2. curriculum and specialized mediation training course development;
3. formal training for intervenors and mediators;
4. mediation policy development, including standards and procedure guidelines;
5. the creation of a roster of mediators;
6. development of communications materials for First Nations and on reserve taxpayers; and
7. an annual mediation assessment and review process.

To properly develop a customized mediation program tailored to the unique requirements of First Nations, CBI first conducted an independent and confidential review of ITAB's past role in assisting taxing authorities and other stakeholders in settling disputes. CBI's findings were subsequently incorporated into the curriculum.

The Harvard University Native American Program, the Consensus Building Institute, the M.I.T-Harvard Public Disputes Program and ITAB signed a Memorandum of Understanding in October 1999 to form a Partnership on Dispute Prevention and Resolution. The primary purpose of the partnership is to focus on dispute prevention and dispute resolution for matters related to taxation resulting from the establishment of First Nation jurisdiction. Dispute prevention and dispute resolution training materials and tools will also be developed. The goal is to ensure that sound agreements are efficiently reached by promoting the fair and efficient resolution of disputes at the lowest possible level when conflict does arise.

Mediation Training

A seven-day Mediation Training course, developed by CBI as a pilot for ITAB, was held at Harvard University in October 1999. Twenty-two participants from First Nations organizations received certificates upon their successful completion of the course. The evaluation of this course was incorporated into the Mediation Program curriculum.

III. SPECIAL INITIATIVES

ITAB's Response to the Challenges: The First Nation Taxation Commission (FNTC)

Supported by resolutions from First Nation tax authorities in June 1999, the AFN in July 1999, and by DIAND and the Senate Committee on Aboriginal Peoples, the next step in the evolution of the Indian Taxation Advisory Board is the creation of a First Nation Taxation Commission (FNTC). The delegated authority of ITAB will be replaced by a new statute-based FNTC. The FNTC will employ a strategy that reconciles the interests of First Nation tax authorities, on-reserve property taxpayers and the federal government. This strategy will also be consistent with the objective of expanding First Nation jurisdiction and promoting stronger, healthier First Nation communities.

A principal objective of the FNTC will be to protect the integrity of the First Nation tax system and thereby increase its value to First Nations and on-reserve property taxpayers. This is achieved by ensuring administrative efficiency, preventing disputes and generally reconciling the seemingly divergent interests of on-reserve property taxpayers and First Nation tax authorities. Many disputes result from a failure to fully realize the potential of reconciliation. A core function of the FNTC will be the constant communication and consultation with all affected parties.

The reconciliation of interests becomes possible if the primary objective of First Nations is viewed "as what is best for the collective future of all First Nations". In fact, this allows the interests of taxpayers, investors, the federal government and First Nation tax authorities to be served by essentially the same strategy: building an attractive investment climate on reserve.

- This strategy serves First Nations best because it generates the highest social and economic returns from property tax. What can be earned from new investment far outweighs the value of additional funds drawn from the existing tax base. New investment means new taxpayers, an increase in the value of the tax base, higher lease revenues and, most importantly, social and economic improvements resulting from new job and investment opportunities. This strategy also demonstrates the benefits of First Nation jurisdiction and hence builds a sound political base for self-government and the expansion of First Nation tax jurisdiction.

- This strategy serves on-reserve property taxpayers because it protects the value of their investment. The guarantee of quality services at a fair price over the life of their investment is precisely what taxpayers want.

- This strategy serves federal interests because it creates jobs and economic self-sufficiency in First Nation communities. The federal government also wishes to avoid self-government developing in a way that entails a patchwork of different regulatory regimes across the country. This would compromise their interest in maintaining the economic union. If First Nations seek to attract investment, then harmonizing regulations and standardizing administrative systems is also in their best interest.

The role of the FNTC is to do what individual First Nation governments require, but cannot accomplish individually. The FNTC will provide broad-based reassurance to investors that it can ensure administrative and regulatory harmony and stability. It will also assure investors that it is responsible for sound administrative practices and efficiently providing essential services such as timely dispute resolution.

The FNTC represents another step on the path towards self-government: moving from an advisory body answering to the Minister to a service agency for First Nations, on-reserve property taxpayers and other stakeholders.

IV. SUPPORTING PROGRAMS

1. Research

ITAB's research activities are undertaken to enhance First Nations fiscal relationships with Canada and other levels of government, respond to taxpayer requests, expand taxation jurisdiction or sources of taxation revenue and those which will further investment for economic development on reserve. The following represent the highlights of ITAB's research activities for 1999-2000:

Expanding Commercial Activity on First Nation Land

ITAB and the Research and Analysis Directorate within DIAND co-steered a study entitled *Expanding Commercial Activity on First Nation Land with a New Fiscal Relationship.* The objective was to identify those elements of the current fiscal relationship that raise the cost of doing business on reserve and thereby lower the return to investment on reserve. Specific barriers to investment, an estimate of their costs and the specific causal factors behind them, were identified and categorized.

The study was completed in November 1999. A key finding of the research was the lack of opportunity on reserve as a result of the burden created by the imposed regulatory framework that impacts First Nation governance. This has artificially raised the costs of doing business far beyond that found off reserve. Strategies were identified and recommended to make First Nations more attractive for business investment by improving the regulatory environment.

Turning on the Taps - Best Practices in Investment Facilitation

ITAB and the Research and Analysis Directorate co-steered a second study as a follow up on the recommendations of the *Expanding Commercial Activity* research project. *Turning on the Taps* focused on the identification of the best practices by which First Nations could better market their sites to potential investors. To facilitate investment on reserve, two aspects of the investment process were studied: first, the information requirements of investors against the current availability and accessability of that information to them; and second, the best practices of marketing sites and investment facilitation compared to the current approaches used by First Nations.

The case studies, investor interviews and literature review identified a number of practices that would lower investment search costs and make First Nation investment facilitation processes more efficient. Recommendations included completion of a land tenure study, pilot regional protocol agreements with surrounding jurisdictions, pilot First Nation regional economic institutions, pilot consolidated economic development studies, pilot Web-based investor friendly information systems,

pilot comprehensive land-use plans and official community plans, pilot infrastructure financing, elements of improved regulatory system and natural resource projects by sector.

Facilitating On-Reserve Investment

This research project was directed toward the expansion of revenue options for First Nations under section 83 of the *Indian Act* which could facilitate investment on reserve to improve economic development. ITAB was interested in cultivating two broad types of local revenue streams for First Nations: those associated with fees for services and those associated with converting raw land to serviced land. Fee for services includes business licensing, building permits, animal control and others. The development costs charge is the most common fee associated with converting raw land to serviced land.

The absence of an on-reserve fee structure for a variety of services creates uncertainty for potential developers. Complex and often ad hoc negotiation processes are then required to incorporate these service costs into lease agreements.

Recommendations of the study include the development of a process, a sample regulatory environment and capacity development instruments — all of which will lower the costs of doing business with First Nations and encourage economic development.

Getting First Nations Government Right - Tax Revenues and Related Expenditures

This research project examined the relationship between First Nation real property tax revenues and First Nation expenditures relating to the property taxes collected. The goal of the project was to develop a national policy for ITAB to assure on-reserve property taxpayers are receiving quality services at a fair price.

The study examined the following issues:

- What types of detailed expenditures should be associated with property tax revenues?
- What are the principles for aligning tax expenditures with tax revenues? How should these principles be prioritized?
- What is an appropriate amount to spend on a particular service?
- What are the comparability considerations for determining these service expenditure amounts?
- How can tax-related expenditures be reviewed and perhaps be regulated?
- What is the appropriate role for taxpayers to play in determining expenditure requirements and assessing the value of tax expenditures?

The project provided several policy options for consideration by ITAB, its clients and the federal government.

Additions to Reserve-Municipal Boundary Expansion Process

This research project was a key component of the Assembly of First Nations/Indian and Northern Affairs Canada Joint Initiative for policy development as a part of the Additions to Reserve (ATR) policy review process. The project had two distinct components: the first identified the methods and processes by which municipal boundaries are expanded in Canada, while the second compared the Municipal Boundary Expansion (MBE) method to the process of expanding First Nations reserves through the Additions to Reserve policy.

A direct comparison between the ATR and the MBE process in 10 provinces was difficult for two reasons:

1. MBE and related issues are governed by a *Municipal Act* in every province and subsequently regulated directly or indirectly though an appointed body by the Ministry of Municipal Affairs in each province. ATR is loosely governed by the *Indian Act* and regulated by DIAND with support from other federal departments.

2. There are also significant fiscal differences between local government and First Nations. These differences affect the consultation processes for ATR and MBE and the nature of the fiscal service disputes.

The study concluded with three recommendations from the MBE that should help to achieve informed consent for the ATR process more quickly:

1. To improve consultation processes, understand the interests of local governments and their constituents and use their best practices to enhance ATR consultations with them;

2. The MBE process has a much longer history and experience than does ATR. This experience has led to a number of best practices relating to clarity, transparency, review approval and transition which, with adjustment, could be applied to the ATR processes to ensure quicker informed consent; and

3. Place more emphasis on solutions and responses to fiscal and economic concerns.

3. Legal Issues

Jurisdictional Legal Issues

Constitutionally and historically, the ability to levy taxes on real property belonged solely to the provinces. This changed with the passing of the amendment to section 83 of the *Indian Act* in 1988, which enabled First Nations to pass bylaw legislation to levy real property taxes on reserve land. The federal government, consequently, had no legal precedent, experience or capacity to manage this jurisdictional area. Numerous legal issues and challenges have arisen over this potential jurisdictional duplication, many of which have been resolved through ITAB's active intervention.

As First Nations establish their taxation jurisdiction, legal issues — some in varying stages of consideration before the courts or under negotiation — continue to emerge. These include land valuation, discrimination and disputes over rights-of-way.

The Board has provided leadership on many of these issues through legal and historical research and by providing notice and analysis of emerging legal developments and significant court decisions affecting First Nations taxation powers.